

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22 of 2011

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1. Mewa Rai @ Mewa Lal Rai, s/o- Late Ramlochan Rai
2. Kuldip Rai, s/o- Late Ramlochan Rai
3. Charandeep Rai, s/o- Late Ramlochan Rai
All residents of Village-Barwa Khurad, Pargana-Barai, P.S.-Basantpur, Distt-Siwan
.... Petitioner/s

Versus

1. Ruplal Sahani s/o- Late Tilak Sahani,
2. Rajendera Sahani, s/o- Late Tilak Sahani
3. Durga Sahani Late Tilak Sahani
4. Harendera Sahani Late Manshi Sahani
5. Suresh Sahani Late Manshi Sahani
6. Shankar Sahani Late Manshi Sahani
7. Sharda Devi D/O Late Tilak Sahani
8. Rama Sahani Bhikhar Sahani
All residents of Village-Barwa Khurd, Pargana-Barai, P.S.-Basantpur, Distt-Siwan.
.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh
For the Respondent/s : Mr. Shailendra Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
C.A.V. JUDGMENT

Date: 03 - 09-2015

This writ application filed under Article 227 of the Constitution of India is directed against the order dated 24.11.2010 passed by Sub-Judge-V, Siwan (Trial Court) in Title Suit No. 253 of 2001 allowing the amendment petition of the plaintiff-respondent first party on imposition of cost.

The plaintiffs-respondents instituted the suit against the defendants-petitioners and one Rama Sahni (defendant 2nd party/respondent) for a declaration that the sale deed in respect of the suit property executed by plaintiff no. 1 and Munsu Sahni in favour of the defendant be declared as forged and inoperative. They further



prayed for a decree of partition claiming $2/3^{\text{rd}}$ share in the suit property to be allotted to their *takhta*. An application (Annexure-3) under Order VI Rule 17 of the Code of Civil Procedure (for short 'the Code') for amendment in paragraph 7 of the plaint and addition of date of the sale deed in the relief portion was filed. The defendants-petitioners resisted the application on amongst the grounds that the same was filed after inordinate delay after filing of the written statement. The plaintiff cannot challenge the sale deed executed in his/their favour which is barred by limitation. Certain admissions made in the plaint with regard to existence of sale deed is/are now sought to be withdrawn. The Trial Court by order dated 24.11.2010 allowed the said application on finding that they were necessary for the ends of justice.

Heard Mr.Binod Kumar Singh for the petitioners and Mr. Shailendra Kumar Singh for the contesting defendants-respondents.

In order to appreciate the rival contentions, the case of the plaintiffs set out in the plaint would be germane. According to the plaint (Annexure-2), the suit land i.e. 1 bigha 19 kathas and 8 dhurs belonged to Khub Lal Sahni which was purchased jointly by the plaintiff(s) and the defendant 1st set (Rama Sahni) through a registered sale deed on 29.12.1953 and the same remained in their joint possession. Such acquisition was made from the individual income of the purchasers. Plaintiff no. 1 remained outside the State in



connection with his business. His other brother Munsu Sahni died in 1995 leaving behind his heirs (another set of plaintiffs) who also remained outside the village and in their absence, Rama Sahni used to look after the land and pay the profit (as per share) after deducting the expenses. There was no *batwara* of the land between them. In paragraph 6 of the plaint, it was stated that the purchasers (defendant-petitioner) of 8 kathas 12 dhurs of land from defendant 1st set (Rama Sahni) may be adjusted in the share of the defendant no. 1 Rama Sahni. In paragraph 7 of the plaint, it was averred that defendant 2nd set subsequently disclosed that they had purchased the land from all the three purchasers of the land from Khub Lal Sahni. Finding a fraud having been committed in execution of such sale deed, a criminal proceeding was lodged against defendant no. 1 in which he was taken into custody. In the relief portion (ka), the plaintiff prayed for a declaration by the Court that the sale deed executed by Durbal Sahni in respect of the suit property as well as defendant no. 1 and Munsu Sahni (father of the other plaintiffs) in favour of defendant no. 2 be declared void having been obtained by fraud. By virtue of amendment, the plaintiffs wanted amendment in paragraph 7 to the effect that in place of '*farik ek*' in the 7th line thereof, the word '*ek*' (one) be read as '*do*' (two). In the prayer portion after the word '*do*' (two), the date of execution of sale deed i.e. 13.5.1969 be added. It was submitted in support of the application before the Trial Court that



such amendment shall not prejudice in any manner the case of the defendant and will require no evidence to be led in support thereof. As noticed above, the Trial Court found the amendment(s) sought to be of formal in nature which is/are not going to change the nature of the suit which remained suit for declaring the sale deed(s) as forged and fabricated and thereafter to effect partition of the suit land obtained jointly by plaintiff no. 1, father of the other plaintiffs and the defendant no. 1 (Rama Sahni).

Counsel for the petitioners, referring to the statements made in paragraph 6 of the plaint submitted that sale of 8 kathas 10 dhurs of land in favour of the petitioners is admitted by the plaintiffs as they sought the land covered thereby adjusted in the share of defendant first party (Rama Sahni). The knowledge regarding such sale is apparent on reading of paragraph 7 of the plaint. By amendment, the plaintiffs want to insert that sale deed dated 13.5.1969 was not executed by Tilak Sahni and Munsu Sahni (plaintiffs). The admission of execution of sale in favour of defendants (petitioners) in paragraph 6 is, now, sought to be withdrawn which is not permissible in law. Such amendment has been sought at a much belated stage when the evidence of both parties was closed. Now, challenge to the legality of the sale deed executed on 13.5.1969 would be barred by limitation as indisputably the written statement was filed in 2004.



In contra, the Counsel for the plaintiffs-respondents have supported the impugned order and urged that amendments prayed for was formal in nature and did not change the nature of the suit. It was found so by the Trial Court and allowed on imposition of cost for delay in making such prayer. The writ petitioners do accept the amendment sought in paragraph 7 as formal in nature as they accept the fact that the defendants-petitioners were made accuseds in the criminal case for having committed fraud and forgery in getting the said sale deed executed by the three purchasers thereof. In the prayer portion of the plaint, the plaintiffs have sought only insertion of the date of the sale deed executed in favour of the defendants-petitioners. The amendments are, therefore, mere clarificatory in nature which is necessary for resolution of the real controversy between the parties. By dint of such amendment, the plaintiffs would not adduce any oral evidence. He relied on *Punjab National Bank versus Indian Bank* reported in (2003) 6 SCC 79 to buttress his contention.

I have considered the submissions of the parties and perused the materials on record. In *Radhika Devi versus Bajrangi Singh AIR 1996 SC 2358* on which the petitioners have placed strong reliance, the suit was filed for partition only. There was no prayer for setting aside or annulling any sale deed. In the written statement, the defendant claimed the land gifted to him in 1978 through registered gift deed. The relief by amendment was sought to challenge the deed

of gift which was held not permissible in law.

In *Mashyak Grihnirman Sahakari Sanstha Maryadit versus Usman Habib Dhuka 2013 (2) PLJR(SC) 356*, which has been referred to by the Counsel for the petitioners, the Apex Court on appraisal of facts of the case found amendment an afterthought. The plaintiffs' explanation of ignorance of the fact on the basis of the particular facts of the case was not found probable and no any such relief was prayed for in the plaint.

On going through the case at hand, it appears the plaintiffs-respondents have sought partition of 2/3rd share in the land purchased by the plaintiffs and the defendant 1st party after annulling the sale deeds executed in favour of defendants-petitioners. By amendment, only the date of the sale deed is sought to be added. Statements made in paragraph 6 of the plaint can be explained or clarified in view of the relief already sought in the plaint. It may be noted here that for showing admission of a fact in issue having material bearing on the case, the entire pleadings have to be looked into and not a paragraph or a line or word of the plaint divorced from the context. In *Punjab National Bank (supra)*, the Apex Court held that to appreciate the case of the plaintiff(s), the plaint as a whole should be read to find out whether the amendments seek to introduce or add any fresh fact or any fresh cause of action or any new fact. At the cost of repetition, this Court would recount that statements made in paragraph 7

of the plaint in which a formal amendment is sought has not been opposed or objected by the petitioners. The statements made in the said paragraph amplify the case of the plaintiff that the sale deed was executed in a censurable manner. The plaintiffs-respondents have clearly averred about the fraud and forgery committed in the execution of sale deed on 13.5.1969 leading to filing of criminal case in which the defendants-petitioners had to seek bail.

Again in *Laxmidas Dahyabhai Kabarwala vs. Nanabhai Chunilal Kabarwala*, AIR 1964 SC 11, the Apex Court dealing with amendment in the pleadings(s) succinctly noted as under in para 14 (at page 18 of report):

“.....It is, no doubt, true that save in exceptional cases, leave to amend under O.6 R. 17 of the Code will ordinarily be refused when the effect of the amendment would be to take away from a party a legal right which had accrued to him by lapse of time. But this rule can apply only when either fresh allegations added or fresh reliefs sought by way of amendment. Where, for instance, an amendment is sought which merely clarifies an existing pleading and does not in substance add to or alter it, it has never been held that the question of a bar of limitation is one of the questions to be considered in allowing such clarification of a matter already contained in the original pleading. The present is a *fortiori* so. The defendants here were not seeking to add any allegation nor to claim any fresh relief which they had prayed for in the pleading already filed.....”

In the light of legal propositions enumerated hereinabove, this Court is unable to find any perversity of substantial nature in the consideration of the matter by the Trial Court under the impugned

order. From the conjoint reading of paragraph 6 and paragraph 7 along with the amendment sought therein, it does not appear that the genuineness of the sale deed in favour of the defendants was accepted in absolute terms. It is, therefore, unjust on the part of the petitioners to submit that admission made in paragraph 6 is sought to be withdrawn by the amendment. The Court is not oblivious of the fact that in the relief portion of the plaint, the plaintiffs had already prayed for setting aside the sale deeds executed in respect of the land which the plaintiffs along with defendant 1st party jointly purchased and thereafter for partition and grant of 2/3rd share therein.

As a result of the above discussions, I am of the opinion that there is no patent perversity in the impugned order meriting interference under supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

The writ application is dismissed.

(Kishore Kumar Mandal, J)

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